

HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

BRYAN SCHROTBERGER,

CASE NO. C15-5949RBL

Plaintiff,

ORDER ON MOTION FOR
RECONSIDERATION ON FEES

GRAYS HARBOR COUNTY,

Defendant.

THIS MATTER is before the Court on Plaintiff Schrotberger's Motion for

Reconsideration [Dkt. #77] of the Court's Order [Dkt. #74] denying his Motion for Attorneys' Fees and Costs [Dkt. #70] following a \$94,000 jury verdict in his favor.

Schrotberger seeks \$89,201.50 in fees and \$21,896.81 in costs. Grays Harbor opposes the Motion, arguing for a steep reduction in fees based primarily on Schrotberger's lack of success relative to the claims he asserted, and the amount he received from the jury versus the amount he sought (over \$1 million). It also seeks a more modest reduction (~6400) based on fees Schrotberger claims for unsuccessful motion practice. Finally, Grays Harbor asks the Court to deny Schrotberger's cost request, a point that he appears to concede.

1 The first step in determining reasonable fees is to calculate the lodestar figure, by taking
2 the number of hours reasonably expended on the litigation and multiplying it by the appropriate
3 hourly rate. *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). The Court should exclude
4 overstaffed, redundant, or unnecessary time. *Id.* at 434. The Court must also consider the extent
5 of Plaintiffs' success, as that is a "crucial factor" in determining an appropriate award. *Id.* at
6 440.

7 After determining the lodestar figure, the Court should then determine whether to adjust
8 the lodestar figure up or down, based on factors not subsumed in the lodestar figure. These
9 factors¹ were adopted in this Circuit by *Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67, 69-70
10 (9th Cir. 1975) *cert. denied*, 425 U.S. 951 (1976). The applicability of the sixth (whether the fee
11 is fixed or contingent) and tenth (the "undesirability" of the case) *Kerr* factors is doubtful after
12 *City of Burlington v. Dague*, 505 U.S. 557 (1992); *see also Davis v. City & County of San*
13 *Francisco*, 976 F.2d 1536, 1549 (9th Cir. 1992), *vacated in part on other grounds*, 984 F.2d 345
14 (9th Cir. 1993)(fixed vs. contingent nature of fee is not to be considered). Additionally, numerous
15 courts have subsequently held that the bulk of these factors are subsumed in the lodestar
16 calculation. *See, for example, Blum v. Stenson*, 465 U.S. 886, 898-900 (1984).

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21 ¹ The *Kerr* factors are: (1) the time and labor required, (2) the novelty and difficulty of the
22 questions involved, (3) the skill requisite to perform the legal service properly, (4) the preclusion
23 of other employment by the attorney due to acceptance of the case, (5) the customary fee, (6)
24 whether the fee is fixed or contingent, (7) time limitations imposed by the client or the
circumstances, (8) the amount involved and the results obtained, (9) the experience, reputation,
and ability of the attorneys, (10) the 'undesirability' of the case, (11) the nature and length of the
professional relationship with the client, and (12) awards in similar cases. *Kerr v. Screen Extras*
Guild, Inc., 526 F.2d 67, 69-70 (9th Cir. 1975), *cert. denied*, 425 U.S. 951 (1976).

1 In any event, the lodestar calculation is presumptively reasonable, and adjustments (up
2 are down) are appropriate only in rare and exceptional cases. *Id.*, *see also Pennsylvania v.*
3 *Delaware Valley Citizens' Council for Clean Air*, 483 U.S. 711, 728 (1987).

4 Grays Harbor concedes the reasonableness the rate sought by Schrotberger's attorneys,
5 and disputes only the time he spent on unsuccessful motions. But it argues for a post-lodestar
6 calculation to reduce the overall fee. It cites authority permitting a fee reduction to reflect a
7 plaintiff's failure to prevail on most of his claims, or to reflect the fact he obtained far less than
8 he sought. Both factors are present here, and indeed, Schrotberger recovered only the amount of
9 his undisputed medical bills. Grays Harbor urges the Court to permit only a 1/6 recovery,
10 reflecting that he prevailed against only one of two defendants, and on only one of three claimed
11 uses of force ($1/2 \times 1/3 = 1/6$). Alternatively, it points out that Schrotberger recovered only about
12 1/10 of what he sought from the jury, and what he did get reflected "to the penny" his
13 (stipulated) medical expenses.

14 The Court is not willing to rigidly apply this sort of math², though it agrees that a
15 substantial reduction is warranted in this case. The Court will reduce plaintiff Schrotberger's
16 \$89,200 requested fee by the \$6400 spent on unsuccessful motions. It will then reduce that

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22 ² If a § 1983 plaintiff sought \$3 million for a proven constitutional violation and the jury awarded \$2 million, it is
23 not likely that the court would reflexively reduce an otherwise reasonable fee request by 33% on that basis. Indeed,
24 it routinely awards at least some attorneys' fees in constitutional cases even where the jury awards only nominal
damages.

1 amount by 50% for the reasons articulated in Grays Harbor's response, and discussed above.

2 That totals \$41,400. The Court will also award \$5753.18 in costs.

3 IT IS SO ORDERED.

4 Dated this 22nd day of September, 2017.

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7 Ronald B. Leighton
8 United States District Judge

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